

Section 5 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to take any actions deemed necessary to protect a water system and its users' health. These actions include, but are not limited to, the commencement of a civil suit and the request of a permanent or temporary injunction.

5. Under 40 CFR §142.10 (b)(6)(iii), the PRDOH must have right of entry and inspection of public water systems, including the right to take water samples, whether or not it has evidence of violations of an applicable legal requirement.

Section 3 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to conduct inspections and perform monitoring on water systems for human consumption.

Chapter I, Article IX § 2 of the PRDOH Regulation No. 6090 authorizes the inspection by the PRDOH of any drinking water system without previous notice.

Chapter I, Article IX § 5 of the PRDOH Regulation No. 6090 authorizes the Secretary of the PRDOH to take and analyze samples on water systems or any of its components to determine water quality and purity.

6. 40 CFR §142.10 (b)(6)(iv) requires that the PRDOH require suppliers of water to keep appropriate records and make appropriate reports to the State.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted the 40 CFR Part 141, as amended, by reference.

Chapter I, Article IX § 5 of the PRDOH Regulation No. 6090 authorizes the Secretary of the PRDOH to require and examine any record from facilities or systems under its jurisdiction, as deemed necessary.

7. In order to comply with the requirements of 40 CFR §142.10 (b)(6)(v), the PRDOH must be authorized to require public water systems to give public notice according to requirements established in 40 CFR §§ 141.32 and 142.16 (a), respectively.

Section 7 of the APPDWPR, 12 L.P.R.A. §1551, et seq., requires a water system that is, in any way, in noncompliance with drinking water standards to immediately notify the nature and extent of the situation and its possible adverse health effects the local health office, the Secretary of the PRDOH and the media in the area served by the system. If the Secretary of the PRDOH so requires, said notice must be published in a daily newspaper of general circulation while the violation or variance exists, and must be included in water bills issued to system users. Article II §1.02 of the PRDOH Regulation No. 6090 adopted, by reference, the 40 CFR Part 141, as amended.

8. 40 CFR §142.10 (b)(6)(vi) requires that the PRDOH have authority to assess civil or criminal penalties for violation of the local primary drinking water regulations and public notification requirements, including the authority to assess daily penalties or multiple penalties when a violation continues.

Section 9 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to impose civil penalties not greater than five thousand dollars (\$5,000.00) per day per violation of the APPDWPR, of regulations adopted by the PRDOH regarding drinking water, or of any administrative order issued relating to this matter.

Chapter III of the PRDOH Regulation No. 6090 authorizes the imposition of criminal penalties not greater than five thousand dollars (\$5,000.00) per day per violation of Section I of Regulation No. 6090.

Violation of public notice requirements would constitute a violation of both of the APPDWPR and PRDOH Regulation No. 6090.

9. Pursuant to the requirements in 40 CFR §142.10 (b)(6)(vii), the PRDOH must be authorized to require consumer confidence reports to all community water systems. Said reports must be prepared according to 40 CFR Part 141, subpart O.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted, by reference, 40 CFR Part 141, as amended from time to time.

10. Under 40 CFR §142.10 (d)(1), if the PRDOH allows small system variances pursuant to Section 1415(e) of the SDWA, it must provide procedures no less stringent than the SDWA and Subpart K of this part.

Section 4 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to grant variances and exemptions to drinking water regulations, provided they are authorized under conditions not less rigorous than variances or exemptions allowed under federal law.

11. As required pursuant to 40 CFR §142.10 (d)(2), if the PRDOH permits other type of variances, or exemptions, or both, from local primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of §§ 1415 and 1416 of the SDWA. In granting these variances, the State must adopt EPA Administrator's findings of best available technology, treatment techniques, or other means available as specified in Subpart G of this part.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted 40 CFR Part 141, as amended, by reference, and Article II §1.05 of said regulation authorizes variances and exemptions only according to 40 CFR Part 141.4.

12. 40 CFR § 142.10(e) requires the adoption and implementation of an adequate plan for the provision of safe drinking water under emergency circumstances including, but not limited to, earthquakes, floods, hurricanes, and other natural disasters.

Section 6 of the APPDWPR, 12 L.P.R.A. §1551, et seq., directs the Secretary of the PRDOH to promulgate a plan to supply drinking water in emergency circumstances, and authorizes the Secretary of the PRDOH to take any measures deemed necessary to supply it. The plan has been adopted and is periodically revised to reflect any relevant change of

circumstances in the Island or its infrastructure, and changes regarding agency officials to be contacted.

13. 40 CFR §142.10 (f)(1) requires that the PRDOH have authority for assessing administrative penalties of at least \$1,000 per day, per violation, for public water systems serving a population of more than 10,000 individuals. For public water systems serving a population of 10,000 or fewer individuals the penalties to be imposed by the PRDOH must be adequate to ensure compliance with local regulations. As long as these criteria are met, the maximum administrative penalty per violation to be assessed on a public water system may be determined by the PRDOH.

Section 9 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to impose civil penalties not greater than five thousand dollars (\$5,000.00) per day, per violation of the APPDWPR, of regulations adopted by the PRDOH regarding drinking water, or of any administrative order issued relating to this matter.

Chapter III of the PRDOH Regulation No. 6090 authorizes the imposition of criminal penalties not greater than five thousand dollars (\$5,000.00) per day per violation of regulations contained on Section I of PRDOH Regulation No. 6090.

Administrative Order No. 2000-27500 Issued on August 18, 2000, by the Secretary of the PRDOH specifically requires that any penalty imposed on public water systems serving a population of more than 10,000 individuals must be of at least \$1,000 per day per violation, and for public water systems serving a population of 10,000 or less individuals, penalties assessed must adequately deter future violations of applicable regulations.

14. The state agency must administer a Public Water Supply Supervision Program ("PWSS") pursuant to Section 1413 of the SDWA.

The PRDOH administers its PWSS pursuant to Section 1413 of the SDWA and the primary enforcement authority delegated to the PRDOH by the Administrator of the EPA, through communication dated March 1, 1980.

The preceding analysis of the authorities and functions delegated to the PRDOH in the previously reviewed statutes and regulations reveals, in our opinion, that the PRDOH is fully authorized by the APPDWPR to adopt and enforce the SDWA Amendments, that the referenced amendments have been lawfully adopted by the PRDOH and are enforceable through legally adequate means.

Respectfully,


Edda Serano Blasini
Deputy Attorney General

